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# In the Supreme Court of the United States

OCTOBER TERM, 1951

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No. 580

CENTRAL HIDE AND RENDERING CO., *Petitioner*

v.

THE UNITED STATES

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**On Petition for a Writ of Certiorari to the United States Court of Claims**

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Claims (R. 70-76) is not yet reported.

### JURISDICTION

The judgment of the Court of Claims (R. 76) was entered on December 4, 1951. The petition for a writ of certiorari was filed on February 11, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

### QUESTION PRESENTED

Whether, in an action arising from an alleged failure of goods sold by the United States to conform to the contracts of sale, where the Court entered findings of fact that the goods did not substantially deviate from the contracts and a conclusion of law that petitioner could not recover, the omission of an express statement from the findings of fact that the contracts were not broken constitutes reversible error.

### RULE INVOLVED

Rule 41(1) of the Rules of this Court provides in part:

> A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, conclusions of law, judgment and opinion of the court, and such other parts of the record as are material to the errors assigned * * *.

### STATEMENT[1]

In May and June, 1944, petitioner entered into contracts (R. 11-18) to remove waste materials

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[1] The facts are stated as set forth in the Court of Claims' special findings, unless otherwise indicated. The reference "F" designates the finding number; "R.," the record page; and "Tr.," the page in the Transcript of Testimony filed with the clerk, to which reference may be made, as the parties have stipulated (R. 77).

from the kitchens of eleven Army camps in the Eighth Service Command (F. 2, R. 55-56). Under the contracts petitioner paid for these materials at fixed prices per pound, and it used them for rendering into grease and other animal by-products at four rendering plants in Texas (F. 1, R. 54-55). The contracts contained so-called continuation schedules, which, although particular contracts occasionally varied slightly, generally classified the materials to be removed in three groups: (1) cooked grease; (2) "bones and raw meat trimmings, spoiled meats (will consist of meat trimmings, cooked bones, cracklings, poultry heads, feet, and entrails)"; and (3) trap grease (F. 3, R. 56). The dispute centered around item 2, petitioner complaining that much of the material delivered to it under this item had been rendered by the Army camps before delivery, making its value less than petitioner had anticipated (R. 6; F. 3, R. 56).

The Army had issued a directive in letter form from the Quartermaster's Office of the Eighth Service Command in pursuance of a salvage program designed to save grease and fats valuable in the production of glycerine for materiel of war (F. 8, 9, R. 61-62). The letter suggested that the various camps render the waste before delivery either by cooking in the individual kitchens or by setting up central plants at each camp (F. 9, R. 62); one camp adopted the latter course and all

the rest the former (F. 9, R. 63). Some rendering had always been done at the camps, and the effect of the directive was only that of a step in a progressively tightening program (*ibid.*).

This directive was issued at about the time petitioner was negotiating for the present contracts, but its contents were not made known to petitioner (F. 11, R. 65). Petitioner had had some seventeen previous contracts with a number of the same camps, and the last of these contracts were to expire in June, 1944 (F. 5, R. 58). The present contracts were negotiated as renewals, or as extensions to new camps. Each of the new contracts was made with respect to an individual camp, but all of them were negotiated under the supervision of one Colonel Wilson, Director of the Division of Salvage and Redistribution of the Eighth Service Command (F. 7, R. 59). Colonel Wilson issued uniform instructions to the contracting officers (F. 7, R. 59) and also dealt in person with the petitioner about certain changes in the new contracts from the old (F. 10, R. 63).

The changes discussed with Colonel Wilson included a discussion of the now disputed item 2. Under the old contracts cooked bones had not been included in any of the four items classified under the salvage regulations. Petitioner was sometimes given cooked bones free and sometimes not. These cooked bones were apparently profitable to it if received free but not if paid for, for it was the raw

bones and trimmings that provided the largest output of by-products. The new item 2 was altered to include these cooked bones, requiring payment for them. (R. 16; F. 10, R. 63-64.)

Under the new contracts, effective July 1, 1944, petitioner continued its collections. The item-2 materials at some of the camps began to include larger ratios of cooked bones to the total than formerly (F. 12, R. 65-66), and in September petitioner first made a formal complaint of this situation (F. 13, R. 66). At the same time, however, although the program of rendering before delivery was under way in at least some camps, it does not appear to have been effective in reducing the value of the rendered materials.[2] A substantial amount of recoverable by-products remained in the rendered materials (F. 10, R. 64) and there was no substantial change in the quality of the uncooked materials delivered, either at the one camp which had a central rendering plant (F. 9, R. 63), or at the camps which did kitchen rendering (F. 12, R. 66).

Petitioner continued to sustain losses, however; and when its claim was disallowed, it brought this suit (F. 17, R. 69-70). The theory of its case was that it had come to rely on its experience under the old contracts as to the amount of recoverable by-products per pound and that the Army's institu-

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[2] Cooked bones are to be distinguished from rendered material, which was sometimes called cracklings (F. 10, R. 64).

tion of the pre-rendering program, without notifying it, constituted a breach of the new contracts. The court made its special findings of fact (R. 54-70), setting forth the above situation, and entered a conclusion of law (R. 70) that plaintiffs were not entitled to recover. It made no express "finding of fact" that the contracts were not broken; nor, of course, did it make any finding of damages, having held that no recovery could be had.

The court based its decision primarily on the ground that since the facts showed that there was no change in quality of the material after the institution of the rendering program, there was no basis for petitioner's claim of misrepresentation (R. 75-76). It also held that petitioner's complaint based on the increase in the proportion of cooked bones was unfounded because the contracts expressly provided for cooked bones (R. 72) and that the presence of the term "cracklings" in item 2 put petitioner on notice that some of the material would be pre-rendered (R. 74).

## ARGUMENT

The decision of the court below turned on the particular facts of this case; and the findings made by the court, which are supported by substantial evidence, are sufficiently complete without more to compel the conclusion that the contracts were not breached and that petitioner was not entitled to recover. There is, therefore, no merit in petition-

er's attempt to give the case a broad significance by contending that the court violated long-standing rules relating to findings of fact.

Petitioner points to no finding which should have been made and was not, except to suggest (Spec. of Err. 1, 4, 5) that there should have been a finding of the "ultimate fact" that there was no breach of contract.[3] Petitioner correctly states the rule, based on the theory that the Court of Claims' special findings of fact are like a special verdict (*e.g., Luckenbach S.S. Co.* v. *United States,* 272 U.S. 533, 539), that the findings must include so-called "ultimate facts" which are really like conclusions of law. Cf. *e.g., United States* v. *Esnault-Pelterie,* 299 U.S. 201, 205; *Botany Mills* v. *United States,* 278 U.S. 282, 290. But we think that this case clearly falls within the corollary of this rule that "the absence of the finding of an ultimate fact does not require a reversal of the judgment if the circumstantial facts as found are such that the ultimate fact follows from them as a necessary inference." *United States* v. *Wells,* 283 U.S. 102, 120; see, *e.g., United States* v. *Esnault-*

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[3] Petitioner also refers to a failure to make findings of damages (Spec. of Err. 3, 6); but obviously, since the court held that petitioner could not recover, no such finding is necessary or meaningful.

The other findings which petitioner contends were omitted (Spec. of Err. 2) will be seen to relate not to any of the findings of circumstantial fact required by law (see, *e.g., United States* v. *Pugh,* 99 U.S. 265, 270) but to the competency of evidence. See *infra,* fn. 5, p. 9.

*Pelterie, supra,* at 205; *Botany Mills* v. *United States, supra,* at 290.

Here the special findings compel the inference that there was no breach of contract. Petitioner's case below was based on the theory that it was misled by the Government as to the proportions in which the various item-2 waste materials would appear in the goods delivered to it. Examination of the findings, however, reveals clearly that petitioner could not reasonably have been misled. The findings show that its losses mainly stemmed not, as it claimed, from the institution without its knowledge of the program for rendering fats before delivery but from the increased proportion of cooked bones sold to it under the new contracts. See F. 12, 13, R. 65-67. But petitioner cannot contend that it was misled as to this item by any lack of knowledge, for the negotiations on the new contracts expressly dealt with the inclusion of cooked bones, and the parties intended that petitioner should pay for these. See F. 11, R. 64.

There was no warranty that the materials sold would include cooked bones in any particular proportion. The contract expressly disclaimed warranties by providing that sales should be "as is" and "where is" (R. 12).[4] Since there was no mis-

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[4] It is established that, under the analogy of the special findings to a special verdict, reference may be made to the pleadings in aid of the findings. See *Luckenbach S.S. Co.* v. *United States,* 278 U.S. 533, 539. The contract is set forth in the pleadings.

representation, this disclaimer obviates petitioner's contention that its past experience entitled it to hold the Government to a warranty of particular quality. Compare *Snyder Corp.* v. *United States,* 68 C. Cls. 667, with *Harris Bros. Co.* v. *United States,* 61 C. Cls. 445. Moreover, the entire nature of the contract is such as to obviate any implied warranty or agreement that cooked bones would be limited to a maximum proportion of the total. The contract was not simply a sale to petitioner; it was also an undertaking by petitioner to remove whatever material the kitchens might have on hand—a waste disposal undertaking. Obviously, the Government did not agree to provide a particular quality or quantity of waste.

As to the effect of the undisclosed Army rendering program, the court below found it unnecessary to determine whether the absence of disclosure vitiated the express disclaimer of warranty. This conclusion was based squarely on the special findings that the quality of the rendered material did not substantially change under the new contracts. See F. 9, 12, R. 63, 66. These findings were clearly supported by substantial evidence (see Tr. 546, 555-556, 668, 681, 709, 714, 716-717),[5] and nothing

[5] Petitioner suggests that some of the testimony on which these findings were based was hearsay. However, there is adequate additional competent testimony. Also petitioner did not object to the evidence at the hearing, so the objection is waived. See 1 Wigmore, *Evidence* § 18.

else in the special findings is to the contrary. It does appear that the Army's food conservation program was progressively tightened (F. 11, R. 65), but it does not appear that the directive of which petitioner complains produced any appreciable results beyond what had already been done under the old contracts.

But in any event, the contract's express disclaimer of warranty was effective, for while petitioner was unaware of the pre-rendering program, there was no misrepresentation on the part of the Government. See 3 Williston, *Sales* (rev. ed.) § 631.

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL, 1952.

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In The

# Supreme Court of the United States

October Term, 1951

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No. 580

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Central Hide & Rendering Co., A Partnership,
*Petitioner,*

vs.

The United States

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**On Petition for a Writ of Certiorari to the United States Court of Claims**

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## REPLY BRIEF FOR PETITIONER IN SUPPORT THEREOF

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### THE ISSUE INVOLVED

Certiorari should be granted in this case because the Court of Claims failed to make adequate findings of fact upon the main issues in suit. Such failure not only is contrary to the rules of that court, but is contrary to the Acts of Congress on the subject and a long line of well established decisions by this court, holding that a judgment of the Court of Claims may not be supported in the absence of adequate findings upon *every material*

*issue. United States* v. *Penn Foundry Co.*, 337 U. S. 198, decided 1949. Certiorari should be granted for the further reason that the findings on the subsidiary circumstantial facts are so inadequate and deficient, that there is no basis for ascertaining, as a matter of law, that the contracts were not in fact breached.

## RESTATEMENT OF THE QUESTION PRESENTED

Can a judgment by the Court of Claims against petitioner be upheld, where that court failed to make findings of the ultimate facts on every material issue, required to support a judgment, but also failed to make such findings of the subsidiary circumstantial facts, upon which the inference might reasonably be drawn, as to the ultimate facts of whether the contracts in suit were breached, and if so, how much are the damages.

## ARGUMENT

No principle of law is more firmly established or frequently adhered to than that holding that a judgment in the Court of Claims is in the nature of a special verdict and cannot be enlarged or diminished and cannot be sustained unless supported by special findings of fact which extend to all material issues. *United States* v. *Esenault-Pelterie*, 299 U. S. 201, particularly page 205. Also see *United States* v. *Causby*, 328 U. S. 256, particularly the cases cited and discussed near bottom of page 267.

The Government has also cited most of these cases, which of course, hold contrary to its position in the present case. The Government, however, has studiously avoided any reference to the latest expression of this

court on this precise question in the case of *United States* v. *Penn Foundry Co., supra.*[1]

The case of *United States* v. *Wells*, 283 U. S. 102, cited by respondent, is not in point. In fact, this case is in substantiation rather than contradiction to the often repeated and well founded rule, referred to above. If, in fact, the Wells case has any application at all to the issues in the instant case, it is in support of petitioner's position. In any event, the Wells case is not an exception to the rule, but reaffirms and substantiates the rule that the circumstantial facts as found, must be such, that the ultimate facts necessary to support a judgment, must necessarily follow them as a logical conclusion. Such is not the case here. In the present case, the circumstantial subsidiary facts set forth in the court's special findings are completely inadequate. Because they do not cover every material issue raised by the petition and respondent's general traverse. (R. pp. 1-19.)

## CONCLUSION

For the reasons outlined above, it is respectfully submitted that petition for certiorari should be granted.

E. E. Blakely
*Attorney for Petitioner.*

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[1] It is indeed interesting to compare the inconsistencies of the Government's position in the present case, with respect to the requirement of adequate findings on *every material issue*, with the reasoning it urged in support of certiorari in the Penn Foundry case. In that case, of course, "the shoe was on the other foot," so to speak.